

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSE RIVERA,

Plaintiff,

v.

ORDER
09-CV-552A

MR. BRIAN FISHER, Commissioner of the
New York State Department of Correctional
Facility (DOCS)
MR. RICHARD ROY, Commissioner/Inspector
General of the New York State Department of
Correctional Services (DOCS, I.G.),
MR. JAMES CONWAY, Superintendent, Attica
Correctional Facility,
LIEUTENANT (LT.) J. GILMORE, Watch
Commander of Attica Correctional Facility on
January 11, 2007,
SERGEANT (SGT.) MR. THOMAS C. HAPPELL,
Correctional Supervisor of Attica Correctional
Facility, C-Block Yard, on January 11, 2007, and
CORRECTION OFFICER (CO) MR. DAVID SPOYER,
Attica Correctional Facility C-3 yard entrance on
January 11, 2007.

Defendant.

The above-referenced case was referred to Magistrate Judge Leslie G. Foschio, pursuant to 28 U.S.C. § 636(b)(1)(B). On July 11, 2013, Magistrate Judge Foschio filed a Report and Recommendation, recommending that defendants' motion to dismiss be denied.

The Court has carefully reviewed the Report and Recommendation, the record in this case, and the pleadings and materials submitted by the parties, and no objections having been timely filed, it is hereby

ORDERED, that pursuant to 28 U.S.C. § 636(b)(1), and for the reasons set forth in Magistrate Judge Foschio's Report and Recommendation, defendants' motion to dismiss is denied.

The case is referred back to Magistrate Judge Foschio for further proceedings.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

DATED: August 2, 2013